

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1569.00
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: May 10, 2000
DATE OF REPORT: June 9, 2000
REQUEST FOR RECONSIDERATION: yes (revisions resulting from reconsideration are underscored)
DATE OF CLOSURE: September 19, 2000

COMPLAINT ISSUES:

Whether the Eastern School District of Greene Co. and the Orange, Lawrence, Jackson, Martin, Greene Joint Services violated:

511 IAC 7-12-1(j)(4) with regard to the school's alleged failure to include on the student's IEP the length, frequency, or duration of occupational and physical therapy services.

511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's IEP, specifically, failing to permit the student to accompany the kindergarten class on a field trip.

511 IAC 7-12-2(h) with regard to the school's alleged failure to provide nonacademic and extracurricular activities to allow a student with a disability equal opportunity to participate in such services.

511 IAC 7-12-1(c) and (d) with regard to the school's failure to provide the parent with written notice of the case conference committee meeting.

511 IAC 7-8-1 with regard to the school's alleged failure to maintain confidentiality of personally identifiable information about a student with a disability.

511 IAC 7-12-2(b)(5) with regard to the school's alleged failure to ensure the student is in a class and building with his chronological peers.

FINDINGS OF FACT:

1. The Student is seven years old and attends a local elementary school (the "school"). He is eligible for special education and related services as a student with a moderate mental handicap.
2. The Student's IEP indicates that the Student is to receive direct occupational therapy and indirect physical therapy. There is no statement regarding the length, frequency, location, duration, of these services. The local special education district director acknowledges that these specifications were left off the IEP.
3. The Student's IEP indicates that he is to participate with the general education kindergarten class during specials (art, music, gym, etc.), daily recess, parties, field trips, and convocations. The kindergarten class went on a field trip on April 7, 2000, but the Student was not presented with an

opportunity to participate. This was a unilateral decision made by the Student's classroom teacher.

4. The Student's IEP indicates that he is to participate in non-academic and extracurricular activities with parent permission. The Student was not included in both his individual and kindergarten class picture. The local school acknowledged this oversight and arranged for the Student to get an individual picture taken. The Student also participated in a group picture with his peers in his self-contained transition class. The school arranged for group kindergarten graduation pictures taken on May 23, 2000. The Student did participate in the kindergarten graduation.
5. The Student did not participate in a second school-wide fund-raiser during April 2000. The classroom teacher chose not to have the self-contained transition class participate due to low parent participation with the first fund-raiser. According to the local special education district director and the local school principal, a teacher can choose to have a class opt out of participating in school fund-raisers.
6. A case conference committee ("CCC") meeting was convened on April 25, 2000. The Student's parent did not receive prior written notice. Documentation indicates that the CCC was scheduled by phone on April 3, 2000.
7. The Student's parent called the local school board president (the "board president") to schedule a place on the May 2000 local school board agenda. The board president called the parent to make arrangements. According to the parent, the board president also indicated that she was aware, from a conversation with the local superintendent, that the April 25, 2000 CCC had not been completed. The School reports that, at a school carnival held on April 28, 2000, the board president communicated to the local school district superintendent that the parent desired to speak at the May school board meeting. The unfinished CCC meeting was brought up by the board president, and the local school district superintendent confirmed that the CCC did need to reconvene to determine the Student's placement for the next school year. This is the extent of the information shared between the board president and the local school district superintendent.
8. The Student's IEP indicates that he is to attend a half-day, self-contained, multi-categorical class for primary students with specific learning needs who are making the transition into kindergarten or first grade. The class is held in the junior-senior high school wing of a kindergarten through twelfth grade building and taught by the Student's teacher of service. The Student's classmates are also transition students, but the student is with his general education peers daily (see Finding of Fact #3). The Student successfully completed kindergarten during the 1999-2000 school-year.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the Student's IEP fails to include specifics on the length, frequency, location, and duration of direct occupational therapy and indirect physical therapy services. A violation of 511 IAC 7-12-1(j)(4) is found.
2. Finding of Fact #3 indicates that the Student's IEP specifies that he is to participate with his general education kindergarten class on field trips. The Student did not participate in one field trip with the general education class. A violation of 511 IAC 7-12-1 is found.
3. Findings of Fact #4 and #5 indicate that the Student is to have equal opportunity to participate in non-academic and extracurricular activities. The school failed to include the Student in individual and class pictures at the time when his peers were having their pictures taken. A violation of 511 IAC 7-12-2(h) is found on this issue. Because the classroom teacher had the option of determining the class would not participate in a fund-raising event, no violation is found on this issue.

4. Finding of Fact #6 indicates that the Student's parent received notice of a CCC meeting via phone contact. However, prior written notice is required. A violation of 511 IAC 7-12-1(c) and (d) is found.
5. Finding of Fact #7 indicates that the school did not fail to maintain confidentiality of personally identifiable information about a student with a disability. No violation of 511 IAC 7-8-1 is found.
6. Finding of Fact #8 indicates that the Student, in accordance with the IEP, is in an appropriate class and building with his chronological peers. No violation of 511 IAC 7-12-2(b)(5) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Eastern School District of Greene Co. and the Orange, Lawrence, Jackson, Martin, Greene Joint Services shall:

1. Reconvene a Case Conference Committee meeting to review and revise the Student's IEP to include specifications for direct occupational therapy, indirect physical therapy, and any other related services including, but not limited to, length, frequency, duration, and location. A summary of the CCC meeting held shall be submitted to the Division by September 15, 2000.
2. Convene a meeting with all teachers of record to develop specific policy and procedures for ensuring that accommodations, modifications, and special education services including student participation in non-academic and extracurricular activities are satisfactorily carried out and coordinated in accordance to a student's IEP. Copies of attendance, meeting notes, and the procedures must be sent to the Division by September 15, 2000.
3. Send to the Division an assurance statement indicating that the Student was included in the general education kindergarten class picture by July 10, 2000.
4. Provide in-service training to all appropriate special education staff on the requirement of providing parents with prior written notice of CCC meetings. The in-service agenda shall provide training on the legal requirements included in a written notice to parents. This training will take place by July 3, 2000 with copies of attendance, an agenda, and handouts/materials provided to the Division by September 15, 2000.